IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7355 of 2005
with
SPECIAL CIVIL APPLICATION Nos. 7357 & 7358 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR O.YADAV & 3 - Petitioner(s)

Versus

UNION OF INDIA & 4 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner No(s).: 1,2,3.
Mr.Jitendra M.Malkan, Asstt. Solicitor General

for Respondent No(s).: 1, 2,3.
MR SV RAJU for Respondent No(s).: 4.
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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 22/06/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. This order shall dispose of Special Civil Applications Nos. 7355 of 2005, 7357 of 2005 and 7358 of 2005.

2. Present are the petitions under Article 226 of the Constitution of India seeking a relief against the respondent that appropriate writ of mandamus or any other suitable writ, order or direction be issued against the respondents nos. 1 and 2 to hold election for Ahmedabad Cantonment for the post of Civilian Members as per Section 13(4)(f) of the Cantonment Act, 1924 read with Cantonments Electoral Rules, 1945. It is to be seen that in accordance with Section 13 of the Act, a Board was constituted, the term of which was to expire on 31.5.2004, consequently, on occasioning of the vacancy, the respondents nos. 1 and 2 were obliged to hold elections for the civilian members, but they did not do so. We are told that on 27th/29th July, 2004, Government of India, Ministry of Defence, issued Notification S.R.O. 06(E) in exercise of the powers conferred by Clause (b) of sub-section (1) and sub-section (4) of Section 14 of the Cantonments Act, 1924, varying the Board. According to the said notification, the Board had been varied for a period of one year and the term was to expire again on 31.5.2005.

3. Learned counsel for the petitioners submitted that in absence of any notification issued under Section 14, there is no scope for the respondents to say that no direction be issued against the respondents to hold the elections, so that in future, they may issue some notification under Section 14. His submission is that the Board is to be constituted in accordance with Section 13 and if the civilians have a right to represent in the Board then their rights cannot be sacrificed for one reason or the other.

4. Learned Assistant Solicitor General, however, submitted that the earlier notification was issued on 27th/29th July, 2004 and there is every likelihood that the Government of India through Ministry of Defence may issue a fresh notification in accordance with Section 14 sub-section (4) by extending the term of the office of such Board.

5. On being asked that whether instructions have been imparted to the counsel to make such a statement that the Government of India is likely to do so, the learned Assistant Solicitor General for the respondents nos. 1 and 2 submitted that he is still awaiting instructions. Learned counsel for the respondent no. 4 prayed for time to file counter affidavit, but we refuse to grant time on

the ground that the respondent no. 4 has no say in the matter, because, elections are to be notified by the respondents nos. 1 and 2 only. Learned Assistant Solicitor General also prayed for time, but taking into consideration the totality of the circumstances and the nature of the dispute, we are of the opinion that the matter is not required to be adjourned.

6. Section 13 of the Cantonments Act, 1924 provides that the cantonments shall be divided into three classes, namely Class I, Class II and Class III cantonments depending upon the population of the particular area. For the purposes of sub-section (1) of Section 13, civil population shall be calculated in accordance with the latest official census, or, if the Central Government, by general or special order, so directs, in accordance with a special census taken for the purpose. A particular cantonment shall consist of particular number of members is also provided under sub-sections (3), (4) and (5) of Section 13 of the Act. Sub-section (7) of Section 13 provides that every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the Central Government in the official gazette. According to Section 13, elections are to be held

for a particular post which includes the civilian persons who are elected in accordance with law. The term of the office of members of the Board shall be five years and shall commence from the date of notification of his election or nomination as provided under Section-15 of the Act. After the said term expires, the Government of India has a right either to direct holding of fresh elections or vary the Board exercising its powers under Section-14 of the Cantonments Act. In a given case, where the government proposes to go for fresh elections, there would be no problem, but the problem arises where the government wants to exercise its powers to vary the constitution of the Board in special circumstances. The circumstances must be akin to the military operation or for the administration of the cantonment, it is desirable to vary the constitution of the Board in any cantonment under sub-section (1) of Section 14. The notification dated 27th/29th July, 2004 does not say that whether Board has been varied either for reason of military operation or for the administration of the cantonment. It simply says that the Central Government on being satisfied that for the administration of certain cantonments, it is desirable to vary the constitution of the Cantonment board. What

reasons persuaded the government to issue the notification have not been produced before the Court. A word here or there that the government is satisfied that for the administration of certain cantonments, it is desirable to vary the constitution of the Cantonment Board, would not be sufficient. It is further to be seen that the term of the office of members is five years and the Central Government would have a right to extend the period by one more year when it is satisfied that it is necessary in order to avoid administrative difficulty. Any person whose term has been extended shall cease to hold office on the date of the notification of the election of his successor under sub-section (7) of Section 13. In the present matter, though we are not deciding the issue, but we have our own doubts that after expiry of the term of the Board, the period of which has not been extended under Section 15 (1) of the Act during currency of the Board whether the Board can be varied with retrospective effect. Be that as it may, the term or the authority of the Board has also come to an end on 31.5.2005 and till date, no further notification has been issued. In absence of any fresh notification, the Central Government/Union of India is obliged to inform the Court that what steps they propose

to take in the matter. Though sub-section (4) of Section 14 provides that the term of office of a Board constituted by a declaration under sub-section (1), may be extended from time to time, but in absence of such notification, it cannot be presumed that the Government of India proposes to vary a Board or is likely to issue or act under some notification.

7. In absence of a notification varying the Board, we are left with no choice but to issue a direction to the government to hold the elections in accordance with Section 13 of the Act. Let the government start the process and complete the same within a period of six months from today. The petitions are allowed. Rule is made absolute with no order as to costs.

[R.S.GARG, J.]

[RAVI R. TRIPATHI, J.]

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